Comments of
The Juvenile Products Manufacturers Association, Inc.
on the Notice of Proposed Rulemaking
Acceleration of Manufacturer's Remedy Program
NHTSA Docket No. 2001-11108

The Juvenile Products Manufacturers Association, Inc. (JPMA) submits the following comments in response to NHTSA's Notice of Proposed Rulemaking to implement §6(a) of the Transportation Recall Enhancement, Accountability and Documentation (TREAD) Act.

The Juvenile Products Manufacturers Association, Inc. is a national trade association of more than 400 companies in the United States, Canada and Mexico. These companies manufacture and/or import infant and juvenile products such as cribs, car seats, strollers, bedding, and a wide range of accessories and decorative items. Of the more than 400 JPMA members, only five still manufacture automobile child restraints for sale in the United States. The automobile child restraint manufacturers are Britax, Cosco, Evenflo, Graco/Century, and Peg Perego. These five companies have many competitors for other juvenile products (such as strollers or cribs) who do not manufacture automobile child restraints and who, therefore, will not bear the additional costs that will be associated with complying with the various new requirements contemplated by the TREAD Act. As a result, these five companies will incur a competitive disadvantage of higher costs of doing business. While some such additional costs are inevitable as a result of the various rulemakings required by the TREAD Act, JPMA urges NHTSA to strive to ensure that the additional costs are proportionate to the public benefit that will accrue from the additional costs.

Section 6(a) of the TREAD Act authorizes NHTSA to order a manufacturer to accelerate a notification and remedy ("recall") program if NHTSA makes several determinations: first, NHTSA must find that the manufacturer's recall program is not likely to be capable of completion within a reasonable time; second, NHTSA must find that there is a risk of serious injury or death if the remedy program is not accelerated; and third, NHTSA must find that acceleration of the remedy program can be reasonably achieved by expanding the sources of replacement parts, expanding the number of authorized repair facilities, or both.

Under What Circumstances May the Administrator Require A Manufacturer To Accelerate its Remedy Program?

A. *Risk of Serious Injury or Death if the Remedy Program Is Not Accelerated.*

The first finding NHTSA must make before ordering acceleration of a manufacturer's remedy program is that there is a risk of serious injury or death if the remedy program is not accelerated. NHTSA concludes, however, that it need only find that there is a "risk of serious injury or death, not necessarily a higher probability, and most safety recalls address circumstances where there is such a risk."

JPMA disagrees that the required finding is as simple as observing that a safety recall is underway. Congress would not have needed to include this separate finding about a risk of serious injury/fatality if it were sufficient that a safety recall campaign was underway. Instead, JPMA believes that Congress intended this finding to be a significant one, in which NHTSA must balance the safety benefits of accelerating a recall campaign vs. the substantially increased costs that acceleration might impose on a manufacturer.

At a minimum, the required finding will filter out two types of recalls: those that address minor injuries (such as bruises and scrapes) and those that address injury risks that could arise in the future (such as from a part that breaks after several months of use), but which are not present as yet. Neither scenario is eligible for an acceleration order under the terms of the TREAD Act.

B. *Acceleration of the Remedy Program Can Be Reasonably Achieved by Expanding the Sources of Replacement Parts, Expanding the Number of Authorized Repair Facilities or Both.*

i. Expanding the Sources of Replacement Parts. NHTSA concludes that the TREAD Act authorizes it to order a manufacturer either to purchase replacement components from sources other than the manufacturer's preferred vendors, or to add assembly lines and/or production shifts within the manufacturer's factory to produce the replacement parts.

While JPMA does not disagree that the statute contemplates the possibility of either method of expanding the sources of replacement parts in an appropriate case, NHTSA must consider the potentially serious effects on a manufacturer before ordering either method of expansion of the sources of replacement parts.

Ordering a manufacturer to purchase replacement components from new, untested vendors introduces several risks and costs, including the issue of determining compatibility with the components manufactured to the manufacturer's specifications. NHTSA's proposed rule asserts that any remedy provided under an accelerated remedy program "shall be equivalent to the remedy that would have been provided if the program had not been accelerated." But, NHTSA does not explain how a manufacturer is supposed to determine that a repair part manufactured by an unknown vendor is "equivalent" to a repair part manufactured by a trusted vendor to the specifications designed by the child restraint manufacturer. JPMA submits that NHTSA cannot reasonably impose this burden on the manufacturer. Unless NHTSA itself makes the determination that a replacement component is "equivalent" to one that is manufactured by the child restraint manufacturer itself or one of its trusted vendors, there is no basis for concluding that a repair part made by a new vendor is "equivalent" to one made by the manufacturer's contractor, and NHTSA cannot reasonably impose on the child restraint manufacturer the burden of making such a conclusion.

This issue is even more acute in the occasional situation when the remedy chosen by the child restraint manufacturer is to replace the entire restraint with a new one. JPMA has no objection to the proposal that a replacement child restraint be of the "same type and the same overall quality" when the replacement restraint is made by the manufacturer conducting the recall. It would not be reasonable, however, to expect a manufacturer to assure that a replacement restraint manufactured by a competitor has the "same overall quality" as one made

by the recalling manufacturer. The recalling manufacturer will not have access to the proprietary design and manufacturing standards used by its competitors, and will not have access to the preproduction testing and other data needed to assure that the competitors' products have the "same overall quality" as its own products. Again, if NHTSA determines that it is necessary to accelerate a child restraint recall by ordering the manufacturer to provide replacement restraints manufactured by a competitor, NHTSA must make the judgment that the competitor's product has the "same overall quality" as the original product.

With respect to ordering a manufacturer to add assembly lines and/or production shifts in order to produce more repair parts faster than the manufacturer planned to produce them, NHTSA must consider the effect of such an order on existing labor agreements and labor obligations, as well as on the costs of conducting a safety recall campaign. Adding assembly lines or production shifts is an extremely expensive undertaking, one which should be ordered only after NHTSA has considered other, less costly alternatives.

Moreover, NHTSA must recognize that child restraint manufacturers do not have the same manufacturing flexibility as vehicle manufacturers. Most child restraint manufacturers have only one or two plants in which child restraints are manufactured. They have limited tooling and a limited pool of trained workers. For these reasons, adding assembly lines or production shifts is not accomplished easily. It takes significant leadtime and capital. Therefore, it will be difficult for NHTSA to make the necessary finding that adding assembly lines or production shifts can be "reasonably achieved."

ii. **Expanding the Number of Authorized Repair Facilities**. NHTSA has concluded that the TREAD Act authorizes it to order a manufacturer to expand the number of authorized repair facilities. This conclusion has little applicability to the JPMA members, because most child restraint recalls are carried out by means of a replacement component or repair kit that is self-installed by the owner, or by a full replacement of the entire child restraint. It is rare that "repair facilities" are used by child restraint owners to carry out recalls. Therefore, JPMA has no particular comment on this proposal, except to repeat the concern that the costs of ordering extraordinary remedies must be considered by NHTSA before this new authority is exercised.

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JPMA appreciates this opportunity to provide comments to the agency. If there is any additional information that JPMA or its members can provide to assist the agency in developing this rule, please contact us.